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| APPLICATION NO.                | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--------------------------------|-------------|----------------------|---------------------|------------------|
| 10/820,918                     | 04/08/2004  | Brian C. Case        | I-37214             | 8766             |
| 42715                          | 7590        | 06/27/2007           |                     |                  |
| DUNLAP, CODDING & ROGERS, P.C. |             |                      | EXAMINER            |                  |
| P.O. BOX 16370                 |             |                      | PREBILIC, PAUL B    |                  |
| OKLAHOMA CITY, OK 73113        |             |                      |                     |                  |
|                                |             |                      | ART UNIT            | PAPER NUMBER     |
|                                |             |                      | 3738                |                  |
|                                |             |                      |                     |                  |
|                                |             |                      | MAIL DATE           | DELIVERY MODE    |
|                                |             |                      | 06/27/2007          | PAPER            |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |
|------------------------------|------------------------|---------------------|
|                              | 10/820,918             | CASE ET AL.         |
| <b>Examiner</b>              | Art Unit               |                     |
|                              | Paul B. Prebilic       | 3738                |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 31 May 2007.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-16, 30 and 31 is/are pending in the application.  
4a) Of the above claim(s) 4-9, 12, 15, 30 and 31 is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-3, 10, 11, 13, 14 and 16 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 08 April 2004 is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date *various*.  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.  
5)  Notice of Informal Patent Application  
6)  Other: \_\_\_\_.

***Election/Restrictions***

Applicant's election with traverse of Group I and Species A, ZD, and iv in the reply filed on May 31, 2007 is acknowledged. The traversal is on the ground(s) that there is no undue burden in examining all claimed inventions and species. This is not found persuasive because the inventions and species are independent or distinct because claims to the different species recite the mutually exclusive characteristics of such species. In addition, these species are not obvious variants of each other based on the current record. Moreover, there is an examination and search burden for these patentably distinct species due to their mutually exclusive characteristics. The inventions and species require a different field of search (e.g., searching different classes/subclasses or electronic resources, or employing different search queries); and/or the prior art applicable to one species would not likely be applicable to another species; and/or the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

As to the argument that the species must be "independent and distinct", MPEP 802.01 directs the examiner to properly interpret the phrase "independent and distinct" as "independent or distinct."

The requirement is still deemed proper and is therefore made FINAL.

Claims 4-9, 12, 15, and 30-31 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected inventions or species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on May 31, 2007.

***Oath/Declaration***

The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

Non-initialed and/or non-dated alterations have been made to the oath or declaration. See 37 CFR 1.52(c). The address of Michael Garrison was altered without initialing in the declaration filed July 7, 2004.

***Claim Objections***

Claims 2, 3, 10, 14, and 16 are objected to because of the following informalities:

With regard to claims 2, 3, and 16, line 2 of each claim, "the strut" lacks clear antecedent basis since three types of struts are set forth in claim 1. The Examiner suggests changing "the strut" to "the at least one of the struts" in order to overcome this objection.

With regard to claim 10, the use of "comprising" is confusing because the graft member has elements previously set forth therefor. The Examiner suggests changing "comprising" to ---further comprising--- in order to overcome this objection

With regard to claim 14, it is unclear whether "a prosthetic valve" is a modification of the valve of claim 13 or a second valve.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 10, 11, 13, 14, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Pavcnik et al (WO 99/62431). Pavcnik anticipates the claim language where:

- the frame as claimed is the frame (11) of Pavcnik (see Figures 12 to 17);  
the first portion as claimed is the straight portion of the frame (11), and the second and third portions as claimed are the coil bends (12) on either side thereof; the widths of the second and third portions are greater due to the overlapping of the wire;
- the graft as claimed is the covering (57); see Figure 15;
- the attachment element as claimed is the suture (50); see page 7, line 30 to page 9, line 7.

With regard to claims 13 and 14, the Applicants are directed to page 8, lines 7-9 of Pavcnik.

With regard to claim 16, the angle as claimed can be zero degrees and still fall within the scope of the claims.

### ***Conclusion***

Applicant should specifically point out the support for any amendments made to the disclosure, including the claims (MPEP 714.02 and 2163.06). Due to the procedure outlined in MPEP 2163.06 for interpreting claims, it is noted that other art may be applicable under 35 USC 102 or 35 USC 103(a) once the aforementioned issue(s) is/are addressed.

Applicant is respectfully requested to provide a list of all copending applications that set forth similar subject matter to the present claims. A copy of such copending

claims is respectfully requested in response to this Office action if the application is not stored in image format (i.e. the IFW system) or published.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Paul B. Prebilic whose telephone number is (571) 272-4758. He can normally be reached on 6:30-5:00 M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Paul Prebilic/  
Paul Prebilic  
Primary Examiner  
Art Unit 3738